

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION  
Methyl Iodide: Designating as a Restricted Material, Listing as a  
Toxic Air Contaminant, and Use Requirements as a Volatile Organic Compound  
DPR Regulation No. 11-002

NOTICE OF PROPOSED REGULATORY ACTION

AND

NOTICE ON A PROPOSED OZONE STATE IMPLEMENTATION PLAN AMENDMENT  
REGARDING PESTICIDE EMISSIONS IN THE SACRAMENTO METRO,  
SAN JOAQUIN VALLEY, SOUTH COAST, SOUTHEAST DESERT,  
AND VENTURA NONATTAINMENT AREAS

The Department of Pesticide Regulation (DPR) proposes to amend sections 6400, 6452.4, 6624, and 6860; and adopt sections 6446 and 6446.1. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to pesticide chemicals designated as state restricted materials, environmental monitoring, and pesticide enforcement. In summary, the proposed action would designate methyl iodide as a state-restricted material; incorporate it into DPR's volatile organic compound regulatory program; and list methyl iodide as a toxic air contaminant on the basis of its listing as a federal hazardous air pollutant pursuant to Food and Agricultural Code (FAC) section 14021. The proposed action would, in part, make permanent the emergency regulations that are currently in effect.

DPR will accept comments on these amendments that may become part of the ozone state implementation plan (SIP). The federal Clean Air Act requires each state to submit a SIP for achieving and maintaining federal ambient air quality standards for ozone. California's SIP contains an element to reduce pesticidal sources of VOCs. These proposed regulations amend and add to regulations that were previously submitted to the U.S. Environmental Protection Agency (U.S. EPA) to support a pending SIP amendment. Opportunity to comment on the proposed regulations as part of the SIP amendment is being provided in conjunction with this rulemaking.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on March 28, 2011. Comments regarding this proposed action may also be transmitted via e-mail to <dpr11002@cdpr.ca.gov>, or by facsimile at (916) 324-1452.

A public hearing is not scheduled. However, a public hearing will be scheduled if any interested person submits a written request for a public hearing to DPR no later than 15 days prior to the close of the written comment period.<sup>1</sup>

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<sup>1</sup> If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

## EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR protects human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR's strict oversight begins with product evaluation and registration; and continues through statewide licensing of commercial and private applicators, pest control businesses, and advisers; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in FAC Divisions 6 and 7.

Pesticides must be registered (licensed for sale and use) with the U.S. EPA before they can be registered in California. DPR's preregistration evaluation is in addition to, and complements, U.S. EPA's. Before a pesticide can be sold or used, both agencies require data on a product's toxicology and chemistry--how it behaves in the environment; its effectiveness against targeted pests and the hazards it poses to nontarget organisms; its effects on fish and wildlife; and degree of worker exposure.

In 2007, U.S. EPA registered methyl iodide (also called iodomethane) a preemergent fumigant used in agriculture. Injected into soil before crops are planted, the fumigant spreads through the soil to kill weed seeds, plant diseases, and nematodes. It can be applied by drip irrigation under a special protective tarpaulin, or injected into the soil using a tractor that automatically places a tarp over the ground after application. Based on its acute inhalation toxicity, U.S. EPA designated methyl iodide as a federally restricted-use pesticide pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Sales and use of this pesticide are limited to certified applicators and those under their direct supervision, thus controlling the number of persons with direct access to the fumigant.

Concurrent with applications received at the federal level, DPR received applications requesting registration of methyl iodide products for sale and use in California. To register a pesticide, DPR must ensure it can be used safely. In developing effective measures to avoid potentially unsafe pesticide exposures, DPR reviewed studies on possible health and environmental effects, considered a wide range of scientific input, and followed protocols of both U.S. EPA and the World Health Organization. Upon completing its review, DPR established a regulatory concentration target level of 32 parts per billion (ppb) averaged over a 24-hour period for bystanders--five times lower than U.S. EPA's level of 150 ppb, and 96 ppb averaged over an 8-hour period for workers--half of U.S. EPA's allowable level of 193 ppb.

On April 30, 2010, DPR issued a notice of proposed decision to register products containing methyl iodide for use to treat soil before planting of a limited number of crops including strawberries, tomatoes, stone fruits, tree nuts, vines, nurseries, peppers, turf, and field-grown ornamentals. In order to meet these lower exposure standards, DPR required the registrant to obtain U.S. EPA approval on California-specific product labels that have significantly more stringent use controls than U.S. EPA's. Product label approval is obtained by U.S. EPA because

under federal law, the federal agency has sole authority over pesticide labels. U.S. EPA approved the California-specific product labels on November 17, 2010. On December 20, 2010, DPR's Director registered methyl iodide for the uses mentioned above.

Prior to registering methyl iodide, DPR filed emergency regulations with the Office of Administrative Law (OAL File No. 2010-1208-01E) to specifically list methyl iodide as a California restricted pesticide in section 6400(e), thereby triggering the requirement for a permit before its use. The emergency regulation became effective on December 20, 2010.

Title 3 CCR section 6400(a) states that any pesticide labeled as a "restricted use pesticide" pursuant to section 3 of FIFRA is also designated as a restricted material in California. Generally, possession and use of a restricted pesticide registered for agricultural use are allowed only under a permit issued from the local county agricultural commissioner (CAC). However, 3 CCR section 6414(b) exempts pesticides deemed restricted materials only by operation of section 6400(a) from permit requirement provided the pesticide is used by or under the supervision of a certified applicator, unless otherwise required by the commissioner. The certified applicator requirement assures that use will be supervised by individuals that have demonstrated their knowledge and skills to properly use pesticides. The permit requirement added by this regulation will provide an immediate and effective mechanism to facilitate CACs oversight of methyl iodide use to ensure label restrictions are followed and allow CACs to evaluate its use under the specific local conditions of each application site and implement further restrictions through permit conditions if necessary.

The permit process is unique to California. The permit process has the advantage of allowing flexibility in requirements. The problems unique to that use site can be specifically addressed without placing unnecessary burdens on other applications.

In addition, methyl iodide is classified as a volatile organic compound (VOC). A VOC is any organic compound other than those exempted by U.S. EPA pursuant to Title 40, Code of Federal Regulations (CFR) section 51.100. VOCs can contribute to the formation of ground-level ozone, which is harmful to human health and vegetation when present at high enough concentrations. The federal Clean Air Act requires each state to submit a SIP for achieving and maintaining federal ambient air quality standards for ozone. An ozone nonattainment area (NAA) is a geographical region in California that does not meet either federal or state ambient air quality standards. U.S. EPA designates ozone NAAs in CFR section 81.305. Under the SIP, DPR is committed to reduce VOC emissions from agricultural applications of pesticides by specified amounts during the peak ozone season of May 1 through October 31 for five NAAs--Sacramento Metropolitan, San Joaquin Valley, South Coast, Southeast Desert, and Ventura.

Also, the emergency action included a new provision in 3 CCR that specifies the only allowed field fumigation application methods for methyl iodide during the May 1 through October 31 time period that serve as the basis for the calculation of VOC emissions included in the VOC reporting and allowance system set forth in sections 6452.3 and 6452.4 as required to implement the SIP. It also requires the application method used to apply methyl iodide to be specified in the pesticide use report to allow VOC emissions to be calculated based on the reported use.

In January 2008, DPR adopted regulations to reduce pesticide VOC emissions in five ozone NAAs. Those regulations, in part, adopted field fumigation methods for seven fumigant active ingredients, and required DPR to issue an annual emission inventory report that includes an analysis of pesticide VOC emissions, emission potentials, and emission ratings in the five ozone NAAs. Classified as a VOC, DPR will need to account for methyl iodide emissions in its report to develop regulatory strategies that will be imposed in the upcoming peak ozone time period of May 1 through October 31 to reduce VOC emissions.

Pursuant to section 6452.4(b), a draft emission inventory report is made available to the public for comments. The draft report will be made available to the public for a 45-day comment period for submission of written statements or arguments to the Director for review before finalizing the Annual VOC Emission Report. Section 6452.4 does not specify methyl iodide emissions to be accounted for in the draft report; therefore, the emission inventory and all of methyl iodide's factors (emission potentials, emission ratings, analyses) will not be reflected. The following immediate action is necessary to include methyl iodide in the draft annual report used to determine if allowances must be implemented in order for DPR to continue to achieve and maintain federal ambient air quality standards for ozone as required by the SIP.

DPR proposes to adopt section 6446 to clarify that only fumigation methods specified in proposed section 6446.1 are required in the five NAAs during the peak ozone period. These fumigation methods have known emission ratings. Fumigation methods with known emission ratings must be used within the five NAAs during May-October in order to track emissions. Replant of individual vine or tree-sites (tree holes) less than one contiguous acre is not considered field soil fumigations under the provisions of section 6446.1. Emissions are negligible under these conditions.

DPR proposes to add 6446.1(a) to allow field soil fumigations of methyl iodide identified in the labeling in order to facilitate VOC reduction and tracking. Also, DPR proposes to add a subsection (b) pertaining to use of a method for experimental research purposes pursuant to a valid research authorization issued according to section 6260. While it is critical to be able to limit application methods to allow emission tracking, it is important not to block research to develop lower emission methods. Currently, research is underway to develop new application methods (e.g., new tarpaulins, equipment, lower application rates) with lower emissions than the methods described on the label. Without this provision, research would not be allowed to continue. Continuing to allow experimental research will provide immediate and necessary flexibility for innovations that reduce emissions to occur.

Also, DPR proposes to amend 6624(f) to require persons using methyl iodide within the five NAAs to report a description of the method of application in the pesticide use report required by that section. This reported information is critical in determining VOC emissions.

The action of adopting these methyl iodide field fumigation use requirements described above is critical in DPR's ability to meet its obligation to achieve and maintain federal ambient air quality standards for ozone as required by the SIP. Methyl iodide is considered an alternative to methyl bromide and is considered a VOC emitter under federal law. Under the federal Clean Air Act, 70 percent of methyl bromide production has been phased out.

This proposed action would permanently incorporate methyl iodide into DPR's volatile organic compound regulatory program.

Additionally, FAC section 14021 provides that, "Pesticides which have been identified as hazardous air pollutants pursuant to section 7412 of Title 42 of the United States Code shall be identified by the Director as a toxic air contaminant." Existing section 6860(b) contains a list of pesticides that have been designated as TACs pursuant to FAC 14021. DPR proposed to list methyl iodide as a TAC on the basis of its listing as a federal hazardous air pollutant and its presence in pesticides currently registered for use in California.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a new program or higher level of service of an existing program within the meaning of section 6 of Article XIII B of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

The proposed action requires users of methyl iodide to obtain a permit before they use methyl iodide for field fumigation. CACs will be the local agencies responsible for enforcing the proposed regulations. DPR anticipates that there will be no fiscal impact to these agencies because CACs will be following the same permit evaluation process that is currently performed and will not incur any additional costs. Growers would have the option of replacing another fumigant with methyl iodide.

#### COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

#### EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the State will result from the proposed action.

#### EFFECT ON HOUSING COSTS

DPR has determined that the proposed action will have no effect on housing costs.

### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

### CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

DPR has not identified any feasible alternatives to the proposed regulatory action that would lessen any adverse impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

### AUTHORITY

This regulatory action is being taken pursuant to authority vested by FAC sections 11456, 12976, 13145, 13188, 14004.5, 14005, 14023, and 14102.

### REFERENCE

This regulatory action implements, interprets, or makes specific FAC sections 11501, 11708, 11733, 13186, 14006, 14004.5, 14005, 14011.5, 14021, 14023, and 14102.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

## AGENCY CONTACT

Written comments about the proposed regulatory action, requests for a copy of the Initial Statement of Reasons and/or the proposed text of the regulation, and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator  
Department of Pesticide Regulation  
Office of Legislation and Policy  
1001 I Street, P.O. Box 4015  
Sacramento, California 95812-4015  
(916) 445-3991

**Note:** In the event the contact person is unavailable or questions on the substance of the proposed regulatory action may be directed to the following person at the same address as noted above:


Randy Segawa, Environmental Program Manager  
Environmental Monitoring Branch  
(916) 324-4137

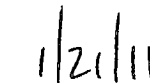
This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the proposed text can be made available in an alternate form as a disability-related accommodation.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

DEPARTMENT OF PESTICIDE REGULATION

  
Director

  
Date